

OGC Has Reviewed

56-1963

Office of General Counsel

28 May 1956

Chief, Finance Division

Request for Write-Off of Loan [REDACTED]

25X1A2d2

REF : Memo for Board of Review for Shortages and Loss, via SSA/DDS,
from Chief, FE/1, dated 7 May 1956, Above Subject

1. Reference proposes that an operational loan to subject be approved for write-off under [REDACTED]

2. A review of the case reveals the following facts and circumstances surrounding this transaction:

a. Subject is an indigenous official who has been of operational value to the Agency and whose future potential to the Agency is expected to be enhanced by cancellation of his operational "loan".

b. At the time the "loan" was made the possibility of non-recovery was recognized but it was indicated that subject's value was such as to justify the amount as an outright operational gift or payment for services rendered. [REDACTED]

c. The loan was approved by Senior Representative, [REDACTED]

d. Subject is not under a contractual or other employment relationship with the Agency of such nature as to preclude operational gifts or purchase of information.

e. Regulation [REDACTED] provides for expenditures of confidential funds for the procurement of confidential information or special services. In accordance with this regulation, accountings for such expenditures are to be supported by receipts where operationally feasible.

f. Subject furnished receipt for funds passed to him. Accordingly, the responsible Case Officer is in position to account for the expenditure as a purchase of confidential information or special services as required for such purchases under Regulation [REDACTED]

3. In view of the facts and circumstances surrounding this transaction, it would have been entirely appropriate at the time the transaction occurred to treat it as an operational payment and to have complied with the

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requirements of regulations to support a charge to operational expense. Rather than follow such course of action, however, responsible officials chose to treat the disbursement as an operational loan, thus preserving identity of the transaction and assuring follow-up for possible recovery of part or all of the funds. This course of action not only served a funds control purpose, but appears to have provided an operational advantage.

4. Now that it has been determined that cancellation of the "loan" is operationally desirable, reference has been prepared to obtain special approval to accomplish an act which, in the first instance could have been accomplished under routine procedure merely by classifying the transaction as "purchase of service or information" rather than as a "loan". Thus, we are now confronted with the prospect of having to invoke special regulatory authorities to "legalize" a transaction which was perfectly proper in the first instance had it been differently classified. Furthermore, the same operational determinations which would have supported the expenditures as a "purchase" or "gift" in the first instance are now required to support the write-off of the same transaction as a "loan". I do not believe that it is intended that regulations be so interpreted, particularly in the area of operational expenditures. On the contrary, it is my opinion that it would be legally proper at this time to treat the loan to subject as an operational gift or payment for procurement of confidential information or services on the basis of the same operational determination and accounting requirements as would have governed such treatment under Regulation at the time the initial payment was made.

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5. Your advice as to whether the views expressed above represent a legally proper approach to cases of this type will be appreciated.

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Distribution:

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FD/LEB:mhp